

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.12.2018

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

Writ Petition No.2435 of 2016

T.Sanjeeva Rao

... Petitioner

-vs-

- 1.The Secretary to Government,
School Education Department,
Government of Tamil Nadu,
Secretariat, Chennai - 9.
- 2.The Director of School Education,
DSE, College Road, Chennai - 6.
- 3.The Headmaster and Correspondent,
Madras Christian College Higher
Secondary School, Harrington Road,
Chetpet, Chennai - 31.

... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Mandamus directing the second respondent to implement his order dated 28.01.2015 directing thereby the 3rd respondent to reinstate the petitioner in his job as P.G. Telugu Teacher paying all the arrears due upto the date of reinstatement.

For Petitioner : Mr.R.Subramanian

For Respondents : Mr.K.Karthikeyan,
Government Advocate for R1 and R2
Mr.Sanjay Mohan for
M/s.S.Rama Subramaniam and
Associates for R3

O R D E R

This Writ Petition has been filed by the petitioner praying for the issuance of a writ of Mandamus directing the second respondent to implement his order dated 28.01.2015

directing thereby the 3rd respondent to reinstate the petitioner in his job as P.G. Telugu Teacher paying all the arrears due upto the date of reinstatement.

2.The petitioner, who suffered an order of removal dated 23.09.2005 passed by the Madras Christian College Higher Secondary School represented by its Headmaster, Chennai, filed Writ Petition in W.P.No.13045 of 2006 taking various grounds to quash the order of removal dated 23.09.2005. When the matter was taken up, the learned counsel appearing for the Education Institution, which is a minority Education Institution, submitted before this Court that the petitioner had refused to attend even the enquiry. Moreover, the explanation offered by the petitioner to the charge memo was also unsatisfactory. Therefore, he was removed from service by an order dated 23.09.2005. It was also one of the arguments advanced by the Madras Christian College Higher Secondary School that the petitioner was not attending the School assembly to maintain the discipline of the students, during the assembly, that he had also refused to sign the acquittance register from the month of February 2002, despite the fact that he had been receiving his salary regularly and that he was sitting as a bad example for the other teachers. Therefore, the charges were levelled against the petitioner. Finally, an enquiry was held in which he did not even attend.

3.Considering these claims and the rival claims made by both parties, this Court finally came to the conclusion to confirm the order of removal dated 23.09.2005. Aggrieved thereby, the petitioner preferred writ appeal in W.A.No.574 of 2010. The Division Bench of this Court also after elaborate discussion, finally confirmed, the order passed by the learned Single Judge giving a finding that there is no violation of the principles of natural justice.

4.It is pertinent to extract the relevant portion of the order passed by the Division Bench confirming the order passed by the learned Single Judge as follows:

"17.....But in cases where there is insubordination or misconduct, etc., it is for the management to take action to terminate the service, but the only requirement is that an opportunity must be given to that teacher. Even a statute which fails to speak about the principles of natural justice must be read as if the principles of natural justice are inherent in the statute. On the facts of the present case, it is not in dispute that the Appellant has been given opportunity to participate in

the enquiry. If the appellant participates only partly and fails to participate in the full enquiry, it does not mean that the second respondent is responsible for the same and no one can jump to a conclusion that the principles of natural justice have been violated. Therefore, in the absence of violation of the principles of natural justice, we do not see any infirmity in the order of the learned Judge.

18. The law is equally well settled that the jurisdiction of this Court under Article 226 of the Constitution of India is basically concerned with the correctness of the decision-making process and not the merit of the decision. If the authority for arriving at such decision does not follow the bare bones of requirements of law, namely the principles of natural justice or audi alteram partem, the Court interferes. Applying the said yardstick, we do not see any reason to interfere with the finding of the second respondent/School as well as the finding of the learned Single Judge.

19. It is brought to the notice of this Court by the learned Counsel for the appellant that as against the original impugned order passed by the second respondent/School, the appellant has approached the first respondent and it is only after the first respondent passes order, the appellant can invoke his right of filing an appeal under Section 23 of the Act, followed by further appeal under Section 24 of the Act. If such representation of the appellant is pending with the first respondent, the first respondent shall pass appropriate orders in the manner known to law. There is no impediment for the educational authorities to pass such orders by virtue of this Judgment.

In the result, the writ appeal fails and the same is dismissed and the order of the learned Single Judge is confirmed. No costs."

However, an observation was made, when the counsel appearing for the appellant therein/petitioner herein brought to the notice of this Court that against the original order passed by the School, the petitioner had approached the Director of School Education, Chennai, the first respondent therein and only after passing any order by the first respondent therein, the appellant therein/petitioner herein can invoke his right of filing of an appeal under Section 23 of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 (hereinafter referred to as the Act) followed by further appeal under Section 24 of the Act. This Court made an observation that if such a representation of the petitioner was pending with the Director of School Education, the first respondent therein, the first respondent therein was directed to dispose of the same in the manner known to law. It is not known how the Director of School Education can once again looked into the correctness or validity of the order of removal dated 23.09.2005, when it was repeatedly confirmed by the learned Single Judge of this Court by order dated 20.01.2010 passed in W.P.No.13045 of 2006 and again by the Hon'ble Division Bench of this Court by order dated 27.03.2012 passed in W.A.No.574 of 2010. These vital facts were not properly brought to the notice of the learned Single Judge while entertaining subsequent writ petition filed for issuance of writ of mandamus and it is not known why these facts were not brought to the notice of the learned Single Judge while passing order in W.P.No.31115 of 2012 to consider the disposal of the appeal by the Director of School Education. As I mentioned above, when the order of removal dated 23.09.2005 was confirmed by the learned Single Judge in W.P.No.13045 of 2006 and it was again confirmed by the Hon'ble Division Bench in W.A.No.574 of 2010, no writ petition can be filed by the petitioner. Moreover, it is made clear that the Director of School Education also cannot entertain any appeal and if any order has been passed by him, the same cannot have any legal validity.

5. With these observations, this writ petition fails and accordingly, the same is dismissed. No costs.

Sd/-
Assistant Registrar (CS-III)

//True copy//

Sub Assistant Registrar

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To

1.The Secretary to Government,
School Education Department,
Government of Tamil Nadu,
Secretariat, Chennai - 9.

2.The Director of School Education,
DSE, College Road, Chennai - 6.

+2cc to Mr.R.Subramanian, Advocate SR.No.347

+1cc to M/s.S.Ramasubramanian & Associates, Advocate SR.No.89835

W.P No.2435 of 2016

RSV(CO)
GMY(30/01/2019)



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